

**REQUEST FOR PROPOSALS
FOR SALE OR LEASE AND DEVELOPMENT
RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT PROPERTY
BROADWAY/6TH AVENUE PROJECT SITE**

SOLICITATION INFORMATION AND SELECTION SCHEDULE

Solicitation Number:	RN2017-09-15
Solicitation Title:	REQUEST FOR PROPOSALS FOR SALE OR LEASE AND DEVELOPMENT - RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT PROPERTY – BROADWAY/6 TH AVENUE PROJECT SITE
Release Date:	September 15, 2017
Publication Dates:	September 18, 2017 and September 25, 2017
Pre-Submittal Conference:	None
Final Date for Inquiries:	October 6, 2017
Proposal Due Date and Time:	October 20, 2017 4:00 PM (local time, Tucson, AZ)
Shortlist Announced for Oral Interviews (if any):	October 31, 2017
Oral Interviews (if necessary):	TBD
Target Award Date:	November 30, 2017 or TBD (depending on Interviews)
RFP Administrator:	Brandi Haga-Blackman 400 West Congress Street, Suite 152 Tucson, AZ 85701 brandihb@rionuevo-tucson.org 520-623-7336

- * In the event that a Developer cannot be selected based solely on Proposals submitted, oral interviews may be conducted at the District's sole discretion.
- ** The Rio Nuevo Multipurpose Facilities District reserves the right to cancel or amend the solicitation schedule as necessary.

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I. RFP PROCESS; DEVELOPMENT PARAMETERS

1. **Purpose; Scope of Work.** The Rio Nuevo Multipurpose Facilities District (the “District”) is issuing this Request For Proposals (this “RFP”) seeking proposals (“Proposals”) from qualified firms (“Proposers”) interested in the development of approximately .6 acres of District property located at Broadway Boulevard between Scott and 6th Avenues in downtown Tucson, as described in **Exhibit A** and depicted in the aerial photo **Exhibit B** hereto (the “Project Site”). The District seeks Proposals for the purchase or lease and development of the Project Site to further the District's mission to facilitate and participate in the development of a vibrant downtown Tucson. A Proposal may include the purchase or lease of all or a portion of the Project Site.

1.1. **Background.** The District is a multipurpose facilities district formed pursuant to A.R.S. Sections 48-4201 et seq., located in the Tucson Metropolitan Area. The District is governed by a District Board of Directors currently consisting of a Chair and five members. The District's purpose is to own, develop and operate multipurpose facilities for the benefit of the public. While title to the Project Site is currently held by Pima County (“County”), the District has an option to “Ground Lease” the Project Site from the County (“Option Agreement”). The Ground Lease, in turn, includes an “Option to Purchase” the Project Site. A copy of the Option Agreement including the form of Ground Lease and Option to Purchase are attached to this RFP as **Exhibit C**. All Proposals must comply with the terms and conditions contained within the Option Agreement and the form of Ground Lease and Option Agreement. Any proposal that does not comply with these Agreements will be deemed non-responsive and will be rejected by the District. The District reserves the right, at its absolute discretion, to not exercise its option to lease or purchase the Project Site.

1.2. **Development Parameters.** The District offers the Project Site for development in order to develop the area to improve the District, enhance the Project Site and the properties around it, and to encourage further development in the area (“Project”). This section details the desired project that will result from a successful Proposal and lists specific development criteria that must be addressed in Proposals. Elements of several District goals and policies are discussed below, and the Proposers should review these requirements carefully. It is the District's desire that the successful, qualified Proposer will develop, finance and construct a Project that:

A. Creates a mixed-use development project in downtown Tucson that capitalizes on its prominent urban location. The Project Site is currently zoned OCR-2 under the City of Tucson Zoning Ordinance. Proposer will be responsible for compliance with any and all development-related requirements imposed by the City of Tucson, Arizona.

B. Provides an innovative, high quality design that is aesthetically and functionally compatible with surrounding development. The form and design should create functional and appropriate transitions to buildings and projects adjacent to the site. This includes creative solutions related to the parking and circulation needs of adjacent developments. The Proposal should include at least an 8 story structure with a minimum of 150,000 square feet of Class A retail, professional and/or corporate offices, with ground floor retail/restaurant space fronting on Broadway Boulevard, with adequate parking for occupants and members of the

public and vehicular entry and exit from Scott Avenue, and/or Sixth Avenue. The Proposal must include a minimum of 500 parking spaces, with a minimum of thirty (30) parking spaces to be made available to the District for the District's use for any purpose it deems necessary at its absolute discretion.

C. Creates enhanced street-level amenities promoting walkability for pedestrians, and if applicable, with direct connections to adjacent bus and transit stops, pedestrian and bicycle paths.

D. Is initiated and completed within a reasonable time period acceptable to the District. It is the District's desire that the Project will be completed in the shortest timeframe possible, and in any case commencement of construction should be not later than 12 months from the date of Award, and completion of the Project cannot be later than 18 months after construction commences. Proposals should outline strategies to mitigate any potential adverse impacts to the surrounding properties during the development stage of the Project.

E. Is supported by the community and adjacent neighborhoods. There are several neighborhood and community organizations and stakeholders in downtown Tucson interested in the development of the Project Site. A summary of community and stakeholder input should be provided in the Proposal.

2. Preparation/Submission of Proposal. Proposers are invited to participate in the competitive selection process outlined in this RFP. Responding parties shall review their Proposal submissions to ensure the following requirements are met:

2.1. Irregular or Non-Responsive Proposals. The District shall consider as "irregular" or "non-responsive" and reject any Proposal not prepared and submitted in accordance with this RFP, or any Proposal lacking sufficient information to enable the District to make a reasonable determination of compliance with the minimum Project requirements. Unauthorized conditions, limitations, or provisions shall be cause for rejection. Proposals may be deemed non-responsive at any time during the evaluation process if, in the sole opinion of the District:

A. Proposer does not meet the minimum required skill or experience to construct and operate the Project as set forth in the Proposal, and in accordance with the requirements of this RFP.

B. Proposer has a past record of failing to fully perform or fulfill contractual obligations.

C. Proposer cannot demonstrate financial stability and/or capability.

D. Proposer's Proposal contains false, inaccurate or misleading statements that, in the opinion of the RFP Evaluation Committee, is intended to mislead the District in its evaluation of the Proposal.

E. The Proposer's Proposal fails to comply with the Option Agreement and the Ground Lease and Option Agreement attached hereto as **Exhibit C**.

2.2. **Submittal Quantities.** Interested Proposers must submit **one (1) original, nine (9) hard copies** and one electronic copy on a USB flash drive [eleven **(11) total submittals**] of the Proposal. Failure to adhere to the submittal quantity criteria shall result in the Proposal being considered non-responsive.

2.3. **Required Submittal.** The Proposal shall be submitted with a cover letter with an **original ink** signature by a person authorized to bind the Proposer. The Proposal should not exceed a maximum of **one hundred (100)** pages to address the Proposal criteria (excluding resumes and the Proposer Questionnaire, but including the materials necessary to address project understanding, general information, organizational chart, photos, tables, graphs, and diagrams). Cover, back, table of contents and tabs may be used and shall not be included in the page count, unless they include additional project-specific information or Proposal criteria responses. The suggested font for the Proposal is **12 pt. Arial or Times New Roman**. Failure to adhere to the page limit, size and font criteria may result in the Proposal being considered non-responsive. Telegraphic (facsimile), electronic (email) or mailgram Proposals will not be considered.

2.4. **Proposer Responsibilities.** All Proposers shall (A) examine the entire RFP, (B) seek clarification of any item or requirement that may not be clear, (C) check all responses for accuracy before submitting a Proposal, and (D) submit the entire Proposal by the Proposal Due Date and Time. Late Proposals will not be considered. A Proposer submitting a late Proposal shall be so notified. Negligence in preparing a Proposal confers no right of withdrawal after the Proposal Due Date and Time.

2.5. **Sealed Submittals.** All Proposals shall be sealed and clearly marked with the RFP number and title, **(RN2017-09-15 Broadway/6th Avenue Project Site Development)**, on the lower left hand corner of the mailing envelope. A return address must also appear on the outside of the sealed Proposal. The District is not responsible for the pre-opening of, post-opening of, or the failure to open any Proposals not properly addressed or identified.

2.6. **Address.** All Proposals must be delivered, by mail or by hand-delivery, to the District's office, at the following address: Rio Nuevo Multi-Purpose Facilities District, 400 W. Congress, Suite 152, Tucson, Arizona 85701, by the Proposal Due Date and Time indicated on the cover page of this RFP.

2.7. **Proposal Irrevocable.** In order to allow for an adequate evaluation, the District requires the Proposal to be valid and irrevocable for **one-hundred twenty (120)** days after the Proposal Due Date and Time indicated on the cover of this RFP. No contract or any other right related to this RFP is created by the submittal of a response to this RFP. Any contract that may result from this RFP is subject to formal approval by the District Board.

2.8. **Amendment of RFP or Proposal.** At any time prior to the specified Proposal Due Date and Time, a Proposer (or designated administrator) may amend or withdraw its Proposal. Any erasures, interlineations or other modifications in the Proposal shall be initialed in **original ink** by the authorized person signing the Proposal. Facsimile, electronic

(email) or mailgram Proposal amendments or withdrawals will not be considered. No Proposal shall be altered, amended or withdrawn after the specified Proposal Due Date and Time.

2.9. Addenda:

A. If necessary, the District may issue addenda to this RFP. Addenda are issued to amend portions of this RFP, to provide additional information or clarifications, or to respond to questions submitted as provided below. Addenda shall be posted to the District's website and shall be effective immediately upon such posting. By submitting a Proposal, the Proposer is acknowledging that he/she/it has received and understood all addenda to this RFP.

B. Proposers are responsible for obtaining any addenda issued pursuant to this RFP. Except as specifically set forth herein, the District takes no responsibility for informing Proposers regarding the issuance of addenda.

3. Cost of Proposal Preparation. The District will not reimburse Proposers for the cost of developing, presenting or providing a Proposal. Proposals submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Proposer is responsible for all costs incurred in responding to this RFP. All materials and documents submitted in response to this RFP become the property of the District and will not be returned.

4. Inquiries.

4.1. Written/Verbal Inquiries. Any question related to the RFP shall be directed to the RFP Administrator whose name appears on the cover page of this RFP. While the RFP Administrator may answer informal questions regarding the RFP orally, the District makes no warranty of any kind as to the correctness of any oral answers and uses this process solely to provide minor clarifications rapidly. Oral statements or instructions shall not constitute an amendment of this RFP. Questions related to this RFP ("Inquiry(ies)") must be submitted in writing and received by the District (via post, hand delivery or email) by the close of business on the Final Date for Inquiries indicated on the cover page of this RFP. In the event the District is closed on the Final Date for Inquiries, the Proposer shall submit the Inquiry(ies) to the RFP Administrator via email or voicemail on that date. Any Inquiry related to this RFP shall refer to the number and title, page and paragraph. However, the Proposer shall not place the RFP number and title on the outside of any envelope containing an Inquiry, because such envelope may be identified as a sealed Proposal and thus may not be opened until after the Proposal Due Date and Time.

4.2. Inquiries Answered. The District will respond to all timely submitted Inquiries within **three (3)** business days following the submittal of such Inquiry by the posting of both the Inquiry and the response to the District's website. There will be no responses to any Inquiries submitted after the Final Date for Inquiries listed on the cover of this RFP.

5. Pre-Submittal Conference. A Pre-Submittal Conference may be held. If scheduled, the date and time of this conference will be indicated on the cover page of this RFP. This conference may be designated as mandatory or non-mandatory on the cover page of this

RFP. Additionally, if the Pre-Submittal Conference is designated as mandatory, failure to attend shall render that Proposer's Proposal non-responsive. Proposers are strongly encouraged to attend those Pre-Submittal Conferences designated as non-mandatory. The purpose of this conference will be to clarify the contents of this RFP in order to prevent any misunderstanding of the District's requirements. Any doubt as to the requirements of this RFP or any apparent omission or discrepancy should be presented to the District at this conference. The District will then determine if any action is necessary and may issue a written amendment or addendum to this RFP. Oral statements or instructions will not constitute an amendment or addendum to this RFP. Any addendum issued as a result of any change in this RFP shall become part of the RFP and must be acknowledged in the Proposal submittal. Failure to indicate receipt of the addendum shall result in the Proposal being rejected as non-responsive.

6. Public Record. All Proposals shall become the property of the District. After approval of an agreement by the District Board as a result of this RFP, Proposals shall become public records and shall be available for public inspection in accordance with the District's Procurement Code and State law, except that any portion of a Proposal that was designated as confidential shall remain confidential from and after the time of Proposal opening to the extent permitted by Arizona law.

7. Proposer Licensing and Registration. Prior to the award of the Agreement, the successful Proposer shall be licensed with the Arizona Corporation Commission to do business in Arizona and the City. The Proposer shall provide licensure information with the Proposal. Corporations must provide a Certificate of Good Standing from the Arizona Corporation Commission.

8. Certification. By submitting a Proposal, the Proposer certifies:

8.1. No Collusion. The submission of the Proposal did not involve collusion or other anti-competitive practices.

8.2. No Discrimination. It does not and will not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246.

8.3. No Gratuity. It has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor or service to a District Board member, employee, officer or agent, or any member of the RFP Evaluation Committee in connection with the submitted Proposal. It (including the Proposer's employees, representatives, agents, lobbyists, attorneys, and subcontractors) has refrained, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the RFP Evaluation Committee, District Board, elected officials, and other District staff. All contact must be addressed to the District's RFP Administrator, except for questions submitted as set forth in Paragraph 4, Inquiries, above. Any attempt to influence the selection process by any means shall void the submitted Proposal and any resulting Agreement.

8.4. No Warranties Regarding Abatement of Excise Taxes. To the extent the Proposer intends to lease the Project from the District pursuant to a Government Property Lease Excise Tax ("GPLET") lease that includes an abatement period, Proposer acknowledges that only the City of Tucson, and not the District, has the power and authority to abate any excise taxes pursuant to A.R.S. §42-6209. The District makes no representation, warranty or opinions regarding whether the City of Tucson will or will not abate excise taxes for the proposed Project.

8.5. Financial Stability. It is financially stable, solvent and has adequate cash reserves to meet all financial obligations including any potential costs resulting from an approval of an Agreement by the District Board.

8.6. No Signature/False or Misleading Statement. Failure to sign the Proposal, or signing it with a false or misleading statement, shall void the submitted Proposal.

9. Evaluation Committee & Ranking of Proposals.

9.1. The District Board will select an RFP Evaluation Committee, which will include at least one Pima County representative. The RFP Evaluation Committee will conduct the selection process generally according to the schedule listed on the cover page of this RFP and in accordance with the terms of this RFP.

9.2. Proposals will be opened at the time and place designated on the cover page of this RFP. The name of each Proposer and the identity of the RFP for which the Proposal was submitted shall be publicly read and recorded in the presence of witnesses. Proposals will be initially evaluated under the criteria set forth in Section II (Proposal Format; Scoring) . After this initial evaluation, the RFP Evaluation Committee may elect to interview three to five highest ranked Proposers. Final rankings will be determined after interviews by combining the initial and interview scores. After the District has entered into an Agreement with the successful Proposer, the successful Proposal and the final scoring documentation shall be open for public inspection pursuant to applicable Arizona law.

10. Reservation of Rights by the District. Notwithstanding any other provision of this solicitation, the issuance of this RFP and the receipt of Proposals do not constitute an agreement or commitment by the District that any contract will be entered into by the District. The District expressly reserves the right to:

- 10.1. Reject any or all Proposals or portions thereof submitted.
- 10.2. Reissue another Request for Proposals related to this same Project Site.
- 10.3. Negotiate with any qualified developer.
- 10.4. Extend the timeframe for submission of the Proposals.
- 10.5. Request additional information from any or all applicants.

10.6. Negotiate Business Terms. Any Board direction to commence negotiations with a Proposer does not commit the District to accept any or all of the terms of the Proposal. Final terms of any agreement that incorporates any or all the terms of a Proposal will be agreed upon during negotiations. Negotiations may be terminated by the District and its designated representatives at any time for any reason(s) the District deems appropriate.

10.7. Waive any immaterial defect or informality.

10.8. Negotiate with other Proposers in the order of their ranking if terms cannot be reached or performance achieved in a timely manner.

11. Offer. A Proposal is an offer to contract with the District based upon the terms, conditions and specifications contained in this RFP and all addenda thereto, and the Proposer's responsive Proposal. No contractual relationship shall be established until the Proposer has signed and the District Board has approved, at an agendaized public meeting, in compliance with the Arizona Open Meeting law, an Agreement between the District and the Proposer in the form acceptable to the District Attorney.

12. Submittal Content. Every Proposal must address each of the items listed herein and may include any additional information that the Proposer believes may be important to the Project.

12.1. Contact Information.

A. Provide the primary contact information for the Authorized Representative. Information shall include name, title, address, telephone number and email address.

B. Describe the Contracting Entity which Proposer anticipates would be entering into contracts with the District. The Contracting Entity must be organized and in good standing under the laws of the State of Arizona prior to entering into a contract with the District.

12.2. Executive Summary. Provide a concise summary and narrative of the overall Proposal. *This summary should not exceed two pages.*

12.3. Questionnaire and Affidavit. Proposer must complete, sign and include with its Proposal the Questionnaire and Affidavit set forth in this RFP.

12.4. Project Description:

A. Clearly detail and define the Project including:

- i. Gross square footage of total property in the project and proposed uses (e.g., commercial, retail, office).
- ii. Number of parking spaces (structured or surface). In detail, provide information on cross-access arrangements or joint

development opportunities to allow or provide parking solutions for adjacent projects for maximum efficient use of the overall area developments.

- iii. Building height (feet and stories).
- iv. Expected number of construction jobs.
- v. Expected number of permanent jobs.
- vi. Estimated construction cost.
- vii. Estimated Project cost (all costs).
- viii. Estimated annual sales tax revenue generated upon completion of the Project and the basis for such estimate.
- ix. A summary of community and stakeholder input.

B. Provide a conceptual site plan and building elevations. Colored building elevations are recommended. Identify any phasing on the drawings, where applicable.

C. Describe the utilization of the site and if all or only portions will be incorporated.

D. Describe how the Project will exist in context with adjacent buildings, public amenities and other uses.

E. Provide circulation plan(s) showing transit, vehicular, bicycle and pedestrian access and circulation within and around the site for the various existing and proposed users.

F. Provide a dedicated area of at least thirty (30) parking spaces to be made available to the District for any purpose it deems necessary at its absolute discretion.

G. Clearly describe the method of property control or acquisition.

12.5. Consistency with District Goals for this Site:

A. Detail how the Proposal is consistent with the District's Development Parameters.

B. Describe how the Proposal is consistent with other relevant District and City of Tucson area plans and policies.

12.6. Proposer Qualifications:

A. Clearly identify the key individuals and companies and organizational structure of Proposer and the contracting entity, if different.

B. Clearly identify roles and responsibilities of all Proposal team members.

C. Cite Proposer's experience successfully developing other projects of similar scale and complexity, locally, regionally and nationally, including roles and responsibilities for these projects' team members.

D. Provide proof of good standing of companies, where applicable.

E. Provide contact information for references for other projects cited in 12.6.C above.

12.7. Proposer Business Plan:

A. Provide research/market demand data that clearly demonstrates the Project's viability.

B. Provide details on how the Proposer intends to utilize the Project site and in what form of control of the site, or portion thereof, the Project requires.

C. Demonstrate committed and qualified tenants/buyers/operations for the completed Project.

D. Clearly detail and define the Project's development costs, including all construction costs, soft costs and contingencies.

E. Clearly detail and define the Project's operating revenue and costs, including all revenues, expenses, debt service, taxes, and other assessments for at least **ten (10)** years after occupancy.

F. Provide reasonable assumptions for all costs and revenues.

G. If the project is to be developed in phases, provide all of the above for each phase tied to the schedule in 12.10 below.

12.8. Proposer Financial Capacity:

A. Describe a clear strategy to fund all Project costs.

B. Clearly describe all sources, types and amounts of funding, including equity, financing, grants and other funding sources.

C. Cite other Projects in which the proposed equity/financing/granting entities have successfully worked with the Proposer.

D. Provide clear and compelling information to demonstrate Proposer's financial capacity to execute, complete, and operate the Project successfully.

12.9. Requested District Assistance:

A. Clearly outline the proposed business terms for the Proposal. Proposer's requests for District assistance (if any) should only be for assistance that the District can reasonably accommodate. Specify details such as type of assistance, length of agreement term, commencement and completion dates, etc.

B. Requested level of assistance must be clearly and quantitatively demonstrated to be less than the public benefit generated by the Project.

C. Describe the economic, fiscal, employment and other tangible public benefits generated by the Proposal that are beneficial to the District and the public. Qualitative public benefits such as social or historic preservation goals may be included as support to the well-defined quantitative benefits.

12.10. Project Schedule:

A. Provide a comprehensive schedule that addresses all phases of planning, entitlements, design, plan review, permits, construction and occupancy, based on reasonable assumptions.

B. Provide details on phasing, if applicable.

12.11. Property Purchase or Lease. The Proposer must provide a proposed purchase price (minimum \$2,335,000.00) or a lease rate for the Project Site that is acceptable to the District. If Proposer suggests purchasing or leasing less than the full Project Site, the minimum purchase offer shall be \$81.13 per sq. ft. and shall leave a remainder that retains value to the District for future sale, lease and/or development.

II. PROPOSAL FORMAT; SCORING

Each timely-submitted Proposal will be reviewed for compliance with the Proposal requirements by the RFP Evaluation Committee. Proposals shall be organized and submitted as outlined below. Failure to conform to this designated organization may result in a determination that the Proposal is non-responsive. Additionally the RFP Evaluation Committee will evaluate and award points to each Proposal based upon the evaluation criteria as outlined in this document. Points listed below are the maximum number of points possible for each criteria and not the minimum number that the RFP Evaluation Committee may award. The RFP Evaluation Committee may conduct oral interviews with not more than five (5) of the highest ranked Proposers based upon the Proposal submittal scoring.

1. Nature of the Project. Does the Project have an innovative, high quality design that is aesthetically and functionally compatible with surrounding development? Does the form and design of the Project create functional and appropriate transitions to buildings and projects adjacent to the Project Site? Does the Project include creative solutions related to the parking and circulation needs of adjacent developments? If the Project involves only a portion of the Project Site, is the remaining land functional and useable? Will the Project create permanent jobs

and/or will it generate sales tax revenue and if so, how many or much? Does the Project include a comprehensive and viable access and circulation diagram?

(200 points)

2. Consistency with District Goals for this Site. Is the Project consistent with the District's goals, policies, plans and the Development Parameters? Is the Project a unique, urban and/or mixed-use development or redevelopment? Will the Project, in light of the intended tenants, create, net new jobs and business opportunities?

(200 points)

3. Proposer Qualifications. Does the Proposer have robust experience in financing, developing, managing and operating comparable projects? Does the Proposer and development team have a demonstrated track record of successfully financing, developing, completing and managing comparable projects? Did the Proposer provide sufficient contact information for comparable projects? Was the feedback from these references positive?

(150 points)

4. Proposer Business Plan. Did the Proposer provide details on how it intends to construct the Project and detail its control of the site? Has the Proposal demonstrated specific, committed tenants and/or market demand for the proposed development, and will those tenants create or bring new jobs to the community? Is the plan for operation or management of the Project after completion of construction viable and positive? What benefits will the operating Project have for the Community?

(175 points)

5. Proposer Financial Capacity. Has the Proposer clearly described a viable strategy to finance the Project? Did the Proposer demonstrate its capacity to finance the Project by providing specific written commitments and funding sources for the Proposal such as private equity in the Project, grant funds, investor equity, traditional financing sources and other applicable funding sources? Does the Proposer seek or desire financial assistance, services or construction of infrastructure from the District? Does the Proposer have a proven track record of successfully securing financing for Projects of similar scope and scale?

(175 points)

6. Pricing. How much is the financial return to the District? If Proposer is proposing to purchase the Project Site, has Proposer proposed a purchase price that meets or exceeds the minimum? It is the District's intent either to (i) convey title to or (ii) enter into a long term lease of the Site after the successful Proposer completes the Project pursuant to a development agreement executed by the parties. For purposes of the RFP, completion of this Project is defined as issuance by the City of a Certificate of Occupancy or Completion (whichever is appropriate). If Proposer is proposing to lease the Project Site, Proposer shall

include the proposed lease terms and describe who will own the improvements upon construction and termination of the lease.

(100 points)

7. Project Schedule. Is the timeframe in which the Proposer commits to complete the Project reasonable? Does the schedule include the major milestones such as preliminary review approval, building permit submittal, commencement of construction and completion of construction? If applicable, are the phases clearly detailed and reasonable? Did the Proposer provide a construction mitigation plan that addresses onsite and offsite impacts and potential mitigation strategies?

(100 points)

III. PROPOSER QUESTIONNAIRE AND AFFIDAVIT

Assurances

The undersigned Proposer hereby submits to the District the enclosed Proposal based upon all terms and conditions set forth in the District's Request for Proposals, all addenda thereto, and all referenced materials. Proposer further specifically agrees hereby to construct and operate the Project in the manner set forth in the Proposal submitted.

The undersigned Proposer acknowledges and states, under penalty of perjury, that:

1. The District is relying on Proposer's submitted information and the representation that Proposer has the capability to successfully undertake and complete the responsibilities and obligations submitted in its Proposal and in the resulting contract.
2. The District has the right to make any further inquiry it deems appropriate to substantiate or supplement information supplied by Proposer.
3. Proposer has read and fully understands all the provisions and conditions set forth in the RFP documents upon which its Proposal is based.
4. The forms and information requested in the RFP are complete and made part of Proposer's Proposal. The District is not responsible for any Proposer errors or omissions.
5. This Proposal may be withdrawn by requesting such withdrawal in writing at any time prior to the Proposal deadline but may not be withdrawn after such date and time.
6. The District reserves the right to reject any and all Proposals and to accept the Proposal that, in its judgment, will provide the best quality development to the District.
7. This Proposal is valid for a minimum of **one-hundred twenty (120)** days subsequent to the RFP Proposal deadline.

8. All costs incurred by Proposer in connection with this Proposal shall be borne solely by Proposer. Under no circumstances shall the District be responsible for any costs associated with Proposer's Proposal or the RFP process. No contract is formed by the submittal of a response to this RFP by Proposer, and no expectation of a Contract is created by such submittal.

9. Proposer has not in any manner, directly or indirectly, conspired with any person or party to unfairly compete or compromise the competitive nature of the RFP process.

10. The contents of this Proposal have not been communicated by the undersigned or by any employee or agent to any other person engaged in this type of business prior to the official opening of this Proposal.

11. To the best of the Proposer's knowledge, the information provided in its Proposal is true and correct, and neither the undersigned Proposer nor any partner, corporate officer or managing employee have ever been convicted of a felony or a crime involving moral turpitude.

12. **Proposal Summary**

- ☐ Gross Square Footage (SF)_____
- ☐ Commercial SF_____
- ☐ Office SF_____
- ☐ Other SF (detail)_____

- ☐ Number of Parking Spaces_____
- ☐ Building Height (feet and stories)_____
- ☐ Number of Buildings_____
- ☐ Estimated Number of Construction Jobs_____
- ☐ Estimated Number of Permanent Jobs_____
- ☐ Estimated Value of Project_____

13. **Organization Structure of Entity to Enter into Contracts**

a) What is the name of the Contracting Entity?

- ☐ _____
- ☐ If this entity has been formed, what is the Arizona Corporation Commission file number?

- ☐ If this entity has not been formed, describe the anticipated timing of the creation of such entity: _____

b) Please check the type of organization:

- ☐ Non-Profit 501(c)(3), if so, what year was it incorporated as a 501(c)(3)? _____
- ☐ Other Non-Profit _____
- ☐ Government Entity
- ☐ Sole Proprietorship
- ☐ Partnership
- ☐ Corporation
- ☐ Other _____

c) Identify the members, if an LLC, partners, if a partnership, or officers, if a corporation, for the Contracting Entity identified above. For the purposes of this RFP, addenda and exhibits, any questions regarding the principals are referring to the officers, partners and members as disclosed.

14. **Legal Status**

a) In the past 10 years, has your proposing entity, or any of its principals or its principal's affiliates, filed a petition in bankruptcy court or had involuntary proceedings filed in bankruptcy court? If "Yes," provide date, case name, case number, venue of the proceeding, and the status of each proceeding.

Yes () No ()

b) Has your proposing entity, or any of its principals or its principal's affiliates, been declared to be in default under any obligation to or contract with the District? If "Yes," please provide details concerning the nature of the default, including the District contract number.

Yes () No ()

c) Is the proposing entity, or any of its principals or its principal's affiliates, currently involved in any litigation or claims against the District including any threatened claim or litigation? If "Yes," provide details about such proceedings.

Yes () No ()

d) Have any of the proposing entity's, or any of its principals' or its principals' affiliate's, contracts been terminated prior to their expiration terms, voluntarily or involuntarily, within the last 10 years? If "Yes," provide name, location, and date of the contract(s).

Yes () No ()

e) Has the Proposer, or any corporation or other entity that has, directly or indirectly, a controlling interest in the Proposer, or any subsidiary of the Proposer or other entity in which the Proposer has a controlling interest, or any of the Proposer's principals, officers, or directors, ever been barred from bidding on federal, state or local government contracts? If "Yes," provide the current status of such suspension or debarment proceedings.

Yes () No ()

15. **Affidavit Signatures**

Proposer's Contracting Entity (Legal Name): _____

Description of Proposer's Development Team
(Key Individuals, Companies and Organizational Structure):

Proposer's Authorized Representative:

Printed Name*: _____

Title: _____

Business Mailing Address: _____

Email: _____

Telephone: _____

Signature _____

*Proposal must be signed by an individual authorized to contractually bind the Proposer.

NOTARIZED

Signed and sworn before me this ____ day of _____, 2017.

Notary Signature: _____

My Commission Expires: _____

(Affix Seal)

**EXHIBIT A
TO REQUEST FOR PROPOSALS**

Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF PIMA, STATE OF ARIZONA AND IS DESCRIBED AS FOLLOWS:

Parcel No. 1:

That portion of that certain unnumbered Block (sometimes referred to as Block 248), of the City of Tucson, Pima County, Arizona, according to the plat thereof, as made and executed by S. W. Foreman and approved and adopted by the Mayor and Common Council of said City (then Village) of Tucson, on June 26, 1872, which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats, Page 70, thereof, described as follows:

COMMENCING at the Southwest corner of the property heretofore conveyed by the Corporate Authorities of the City of Tucson, to Kirk L. Hart, by Deed bearing date of December 11, 1903 and recorded in Book 34 of Deeds, Page 822, records of Pima County, Arizona, said point being the present Northeast corner of Broadway and Scott Street;

Thence Easterly along the Southerly line of the property conveyed to Kirt L. Hart, said line being also the present North line of Broadway, a distance of 100.1 feet;

Thence Northerly to a point on the South line of that certain 15 foot strip of ground theretofore conveyed to the said City of Tucson, for alley purposes, by Deed bearing dated May 31, 1992 executed by Kirt L. Hart and recorded in Book 34 of Deeds, Page 15, records of Pima County, Arizona, which point is distant 100.5 feet Easterly from the East line of said Scott Street;

Thence Westerly along the South line of said 15 foot alley, a distance of 100.5 feet to the East line of Scott Street;

Thence Southerly along the East line of Scott Street, being along the West line of said Block, to the POINT OF BEGINNING.

Said property commonly known as Lots 3 and 5, Block 248, City of Tucson.

Parcel No. 2:

That portion of that certain unnumbered Block (sometimes referred to as Block 248), of the City of Tucson, Pima County, Arizona, according to the plat thereof, as made and executed by S. W. Foreman and approved and adopted by the Mayor and Common Council of said City (then Village) of Tucson, on June 26, 1872, which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats, Page 70, thereof, described as follows:

COMMENCING at the Intersection of the West line of 6th Avenue with the North line of Broadway;

Thence North, along the West line of 6th Avenue and the East line of said Block 248, a distance of 114.4 feet, more or less, to a point on the South line of that certain 15 foot alley, conveyed to the City of Tucson by Deed

**EXHIBIT A
TO REQUEST FOR PROPOSALS
(Continued)**

Title No.: FNT0905155

recorded in Book 34 of Deeds, Page 15, records of Pima County, Arizona;

Thence Westerly, along the South line of said alley, a distance of 170.7 feet, more or less, to a point thereon distant 100.5 feet from the East line of Scott Street;

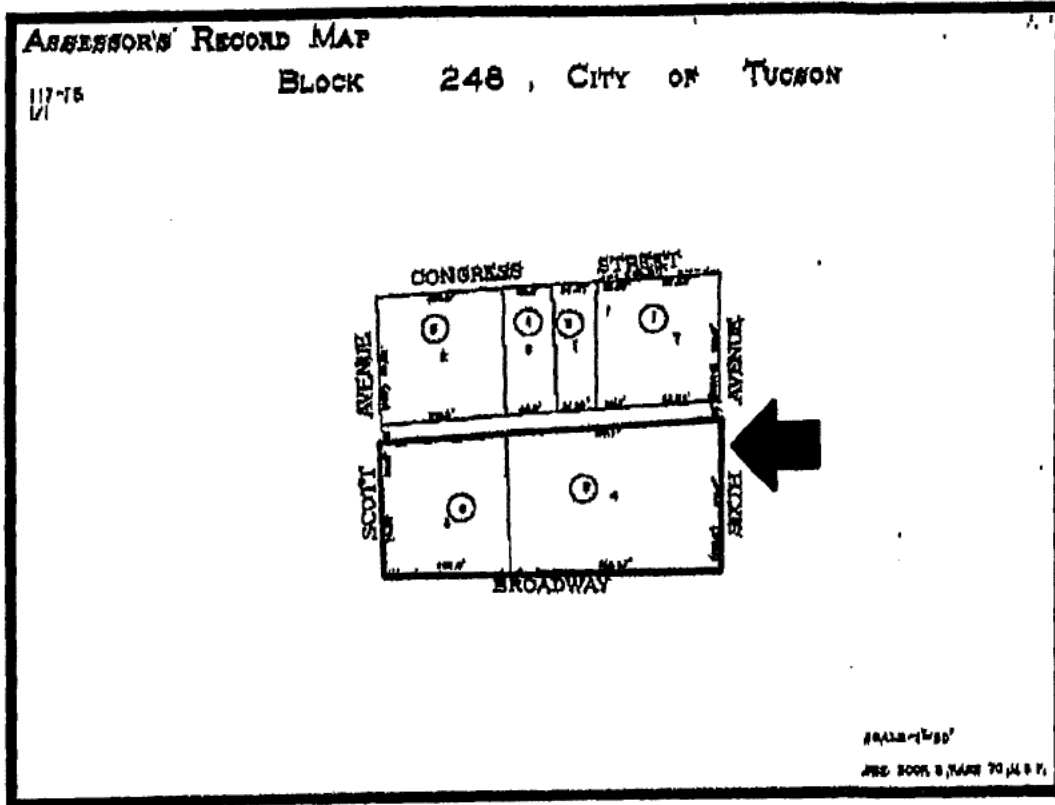
Thence South to a point on the North line of Broadway, distant thereon 100.1 feet from the Northeast corner of Scott Street and Broadway;

Thence Easterly, along the South line of Broadway, a distance of 166.63 feet, more or less, to the POINT OF BEGINNING.

Said property commonly known as Lot 4, Block 248, City of Tucson.

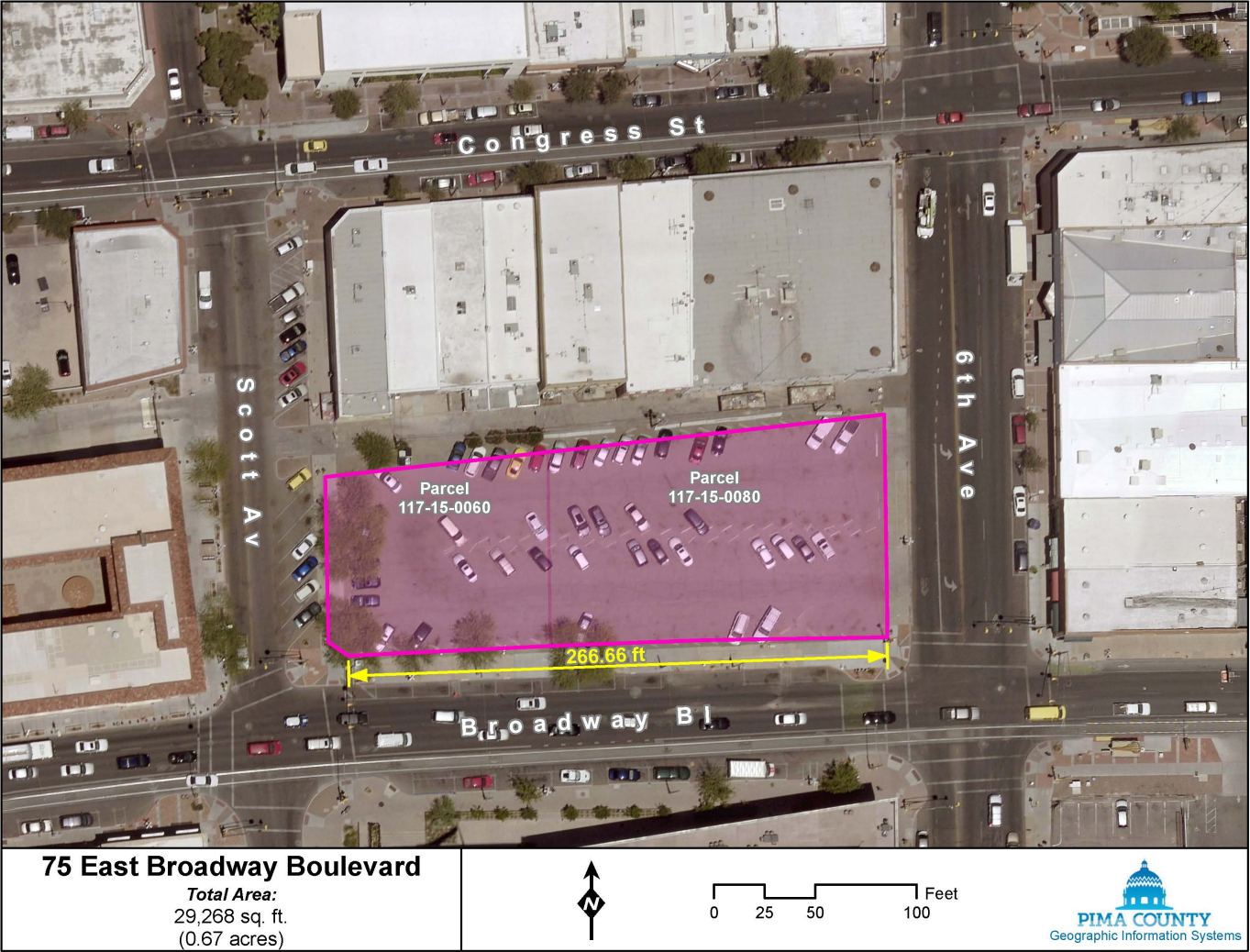
EXHIBIT A
TO REQUEST FOR PROPOSALS
(Continued)

SITE MAP



**EXHIBIT B
TO
REQUEST FOR PROPOSAL**

Project Site Depiction



**EXHIBIT C
TO
REQUEST FOR PROPOSAL**

Option Agreement [Broadway Property]

CONTRACT	
NO.	CTN-CA-17-119
AMENDMENT NO.	
This number must appear on all invoices, correspondence and documents pertaining to this contract.	

OPTION AGREEMENT

[Broadway Property]

This Ground Lease Option Agreement ("**Agreement**") is entered into, effective as of December 13, 2016 (the "**Effective Date**"), by and between Pima County, a political subdivision of the State of Arizona ("**County**") and Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona ("**Rio Nuevo**").

1. Background and Purpose.

- 1.1. Rio Nuevo, as a multipurpose facilities district formed under 48-4202(B), has the authority to acquire property and construct, within the Rio Nuevo multipurpose facility site, commercial facilities that its board determines are necessary or beneficial to the district (A.R.S. §§ 48-4201(4) and 48-4204(B)), and may issue revenue bonds for that purpose (A.R.S. §§ 48-4203(B)(3) and 48-4251). It may also "[e]nter into agreements with developers, contractors, tenants and other users of all or part of" such a facility. A.R.S. § 48-4203(A)(2).
- 1.2. County owns a parcel of unimproved real property (the "**Property**"), approximately 0.6 acres in size, which is located on the north side of Broadway Boulevard, between Scott and 6th Avenues in downtown Tucson, Arizona, within the Rio Nuevo multipurpose facility site. The Property is legally described and depicted on Exhibit A.
- 1.3. The Pima County Board of Supervisors (the "**Board**") has authority under A.R.S. § 11-254.04 to engage in any "activity that the board of supervisors has found and determined will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the inhabitants of the county," including specifically the "acquisition, improvement, leasing or conveyance of real or personal property."
- 1.4. County is interested in leasing the Property to Rio Nuevo for development and sublease to companies whose presence will create economic development opportunities for the community.

2. Definitions.

- 2.1. "**Ground Lease**" means the lease for the Property that County and Rio Nuevo will enter into upon Rio Nuevo's exercise of the Option, the material terms of which will be as set forth in **Exhibit B**. The Ground Lease will be in a form substantially similar to that attached to this Agreement as **Exhibit C**.
 - 2.2. "**Option**" means Rio Nuevo's option to lease the Property from County, as provided below.
 - 2.3. "**Option Term**" means a 2-year period commencing on the Effective Date.
3. "**Rent Amount**" means the fair-market annual rent for the Ground Lease as established under Section 5 below.

4. **Grant of Option.** For and in consideration of the sum of One Hundred Dollars and no cents (\$100.00), the receipt and sufficiency of which are acknowledged and in consideration of the mutual covenants, promises and agreements contained herein, the County hereby grants Rio Nuevo an exclusive option to lease the Property from County, as provided in this Agreement.
 - 4.1. **Exercise of Option.** Rio Nuevo may exercise this Option at any time prior to the expiration of the Option Term by providing the County written notice (the "**Option Notice**") of its election to do so. The Option Notice must include information about the improvements that Rio Nuevo plans to build, and the proposed tenant(s) for the improvements.
 - 4.2. **Approval by Board.** The County will not be obligated to enter into the Ground Lease unless and until the Board takes formal action at a public meeting approving the Option Notice and the Rent Amount. If any of the information provided in the Option Notice is confidential, Rio Nuevo must so indicate; in that event, the Board will be provided details about the Option Notice in executive session as permitted by A.R.S. § 38-431.03(A)(7). Rio Nuevo acknowledges that the County is granting this Option for economic development purposes and that the Board is under no obligation to approve the proposed Ground Lease unless it determines that the Ground Lease will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the inhabitants of the County. Preference will be given to a proposal that includes a sublease to one or more new or expanding high-wage, technology-driven companies.
 - 4.3. **Revocation of Option.** Rio Nuevo may withdraw its Option Notice and elect not to enter into the Ground Lease at any time before the Ground Lease is executed by County.
5. **Establishing the Rent Amount.** Rio Nuevo will, in the Option Notice, include its determination of fair-market-value rent for the Ground Lease, along with a copy of an appraisal by a licensed appraiser that supports that determination. That fair-market-value rent will be the Rent Amount unless the County Administrator or his designee, within 10 business days after receipt of the notice, send Rio Nuevo a written objection, which must contain the name and contact information for another appraiser. This appraiser, together with Rio Nuevo's appraiser, will select a third appraiser. The three appraisers will then determine the fair-market-value rent for the Ground Lease. Any valuation agreed upon by 2 of the 3 appraisers will be the Rental Amount. The appraisers will make their report in writing and deliver a copy to each of the parties. The parties will equally share the cost of the additional appraisers.
6. **Final Ground Lease.** After the Rental Amount is established as provided above, and the Board has approved the proposal, the parties will negotiate diligently to agree upon the final form of the Ground Lease.
7. **Use of Property during Option Term.** County will not, during the Option Term, without Rio Nuevo's prior written consent, make any substantial changes to the physical condition of the Property, and will continue to use the Property in the same way it was being used as of the Effective Date.

8. **Assignment; Successors.** All of the terms, provisions and conditions of this Agreement are binding upon and inure to the benefit of the heirs, successors and assigns of the respective parties.
9. **Notices.** Any notices required or permitted to be given under the terms of this Agreement, or by law, must be in writing and may be given by personal delivery or certified mail (return receipt requested), directed to the parties at the following addresses, or such other address as any party may designate in writing prior to the time of the giving of such notice, or in any other manner authorized by law:

County: Pima County Administrator
130 W. Congress, 10th Floor
Tucson, AZ 85701

Rio Nuevo: Rio Nuevo Multipurpose Facilities District
400 West Congress, Suite 152
Tucson, AZ 85701

with a copy to: Mark Collins, Esq.,
Gust Rosenfeld P.L.C.
One South Church Avenue, Suite 1900
Tucson, Arizona 85701

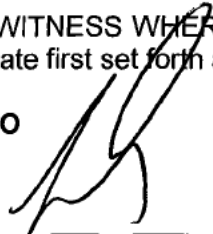
Any notice given will be effective when actually received, or if given by certified mail, then 72 hours after the deposit of such notice in the United States mail with postage prepaid.

10. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Arizona.
11. **Default.** If either party fails or refuses to carry out any provision hereof, the other party will be entitled to such remedy or remedies for breach of contract as may be available under applicable law, including without limitation the remedy of specific performance, if such other party has fully performed all of its obligations hereunder. Time is of the essence hereof.
12. **County's Warranty.** County warrants that it has fee title to the Property as of the Effective Date, and that execution of this Agreement has been duly authorized by the Pima County Board of Supervisors.
13. **Modification.** This Agreement may not be modified except by a written agreement executed by all parties.
14. **Jurisdiction and Venue.** This Agreement must be construed in accordance with Arizona law. Jurisdiction for any dispute or claim raised under this Agreement or proceeding brought to interpret the Agreement will lie solely in the State of Arizona, with venue in Pima County.
15. **Recording.** Upon the execution of this Agreement Buyer and Seller will execute a Memorandum of Option Agreement and record it in the Pima County Recorder's Office.

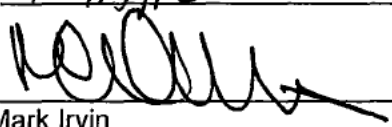
16. **Further Assurances.** Each party agrees in good faith to take, or cause to be taken, any reasonable actions that are necessary to ensure that both parties' rights and interests in and under this Agreement are valid and enforceable.
17. **Counterparts.** This Agreement may be executed by the exchange of faxed or electronic signatures and in any number of counterparts.
18. **Entire Agreement.** This Agreement, together with the Lease and documents related to the Lease, sets forth the entire understanding of the parties with respect to the subject matter of this Agreement, and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date first set forth above.

RIO NUEVO

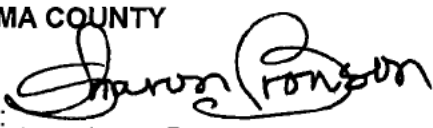
By: 
Fletcher McClusker
Chair of the Board of Directors

Date: 12/13/16

By: 
Mark Irvin
Secretary of the Board of Directors

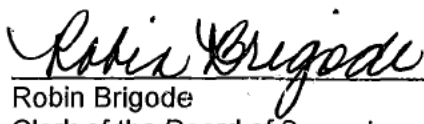
Date: 12.13.16

PIMA COUNTY


By: 
Sharon Bronson
Chair of the Board of Supervisors

Date: DEC 13 2016

ATTEST:


Robin Brigode
Clerk of the Board of Supervisors

APPROVED AS TO FORM:


Deputy County Attorney
REGINA NASSEN

**EXHIBIT A TO LEASE OPTION
LEGAL DESCRIPTION
[BROADWAY PROPERTY]**

Map FN10905155
Amended Map

**LEGAL DESCRIPTION
EXHIBIT "ONE"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF PIMA, STATE OF ARIZONA AND IS DESCRIBED AS FOLLOWS:

Parcel No. 1:

That portion of that certain unnumbered Block (sometimes referred to as Block 248), of the City of Tucson, Pima County, Arizona, according to the plat thereof, as made and executed by S. W. Foreman and approved and adopted by the Mayor and Common Council of said City (then Village) of Tucson, on June 26, 1872, which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats, Page 70, thereof, described as follows:

COMMENCING at the Southwest corner of the property heretofore conveyed by the Corporate Authorities of the City of Tucson, to Kirk L. Hart, by Deed bearing date of December 11, 1903 and recorded in Book 34 of Deeds, Page 822, records of Pima County, Arizona, said point being the present Northeast corner of Broadway and Scott Street;

Thence Easterly along the Southerly line of the property conveyed to Kirt L. Hart, said line being also the present North line of Broadway, a distance of 100.1 feet;

Thence Northerly to a point on the South line of that certain 15 foot strip of ground theretofore conveyed to the said City of Tucson, for alley purposes, by Deed bearing dated May 31, 1992 executed by Kirt L. Hart and recorded in Book 34 of Deeds, Page 15, records of Pima County, Arizona, which point is distant 100.5 feet Easterly from the East line of said Scott Street;

Thence Westerly along the South line of said 15 foot alley, a distance of 100.5 feet to the East line of Scott Street;

Thence Southerly along the East line of Scott Street, being along the West line of said Block, to the POINT OF BEGINNING.

Said property commonly known as Lots 3 and 5, Block 248, City of Tucson.

Parcel No. 2:

That portion of that certain unnumbered Block (sometimes referred to as Block 248), of the City of Tucson, Pima County, Arizona, according to the plat thereof, as made and executed by S. W. Foreman and approved and adopted by the Mayor and Common Council of said City (then Village) of Tucson, on June 26, 1872, which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats, Page 70, thereof, described as follows:

COMMENCING at the intersection of the West line of 6th Avenue with the North line of Broadway;

Thence North, along the West line of 6th Avenue and the East line of said Block 248, a distance of 114.4 feet, more or less, to a point on the South line of that certain 15 foot alley, conveyed to the City of Tucson by Deed

EXHIBIT "ONE"

(Continued)

recorded in Book 34 of Deeds, Page 15, records of Pima County, Arizona;

Thence Westerly, along the South line of said alley, a distance of 170.7 feet, more or less, to a point thereon distant 100.5 feet from the East line of Scott Street;

Thence South to a point on the North line of Broadway, distant thereon 100.1 feet from the Northeast corner of Scott Street and Broadway;

Thence Easterly, along the South line of Broadway, a distance of 166.63 feet, more or less, to the POINT OF BEGINNING.

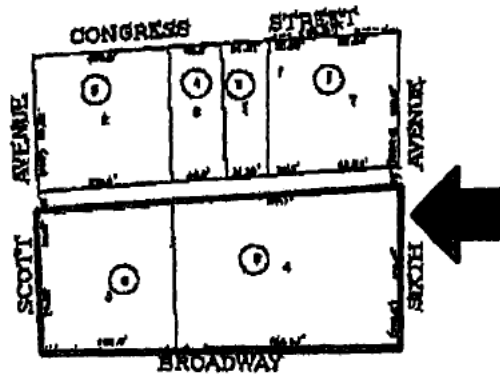
Said property commonly known as Lot 4, Block 248, City of Tucson.

SITE MAP

ASSESSOR'S RECORD MAP

117-15
VI

BLOCK 248 , CITY OF TUCSON



SCALE - 1" = 50'

PREPARED BY: JAMES W. HARRIS, JR.

EXHIBIT B
CONDITIONS FOR GROUND LEASE
[BROADWAY PROPERTY]

The Ground Lease between the parties will reflect the following terms and conditions:

1. Upon acceptance of the Option Notice and Rental Amount by the Board, Rio Nuevo shall be obligated to improve the Property by constructing a Class A, mixed use, retail and professional office building, at least 8 stories in height and with approximately 150,000 square feet of interior space (the "**Building**"), together with appropriate common elements and landscaping (all together, the "**Project**"). The Project may, but is not required to, include an underground parking garage. Retail is permitted on the ground floor only, and residential on the top 2 floors only.
2. Site development plans, including exterior architectural design, are subject to review and approval by the County. Approval will not be unreasonably withheld.
3. Rio Nuevo must contract for the construction of the Project within 18 months of the effective date of the Ground Lease and must complete the Project within 18 months after construction commences.
4. Pima County will provide building permitting and plan review services and inspections.
5. Rio Nuevo will pay rent in the Rental Amount. Payment of rent will commence upon execution of the Ground Lease.
6. The initial term of the Ground Lease shall be twenty-five (25) years, with two successive renewal terms of ten (10) years each, conditioned on Rio Nuevo (or its tenant) making improvements to the Building to keep it up-to-date.
7. Rio Nuevo will be responsible for insuring, maintaining, repairing, and operating the Project.
8. Title to the improvements comprising the Building and the Project shall be held by Rio Nuevo throughout the initial term of the Ground Lease, and any subsequent renewal(s). Title to the improvements will become the County's when the Ground Lease ends.
9. The average wages plus benefits paid by tenants of the Building must exceed 150 percent of the median regional wage.
10. County will consent to Rio Nuevo's grant of a security interest in its leasehold interest as part of its financing of the Project.

Exhibit C to L Option Agreement
Form of Ground Lease

GROUND LEASE AND OPTION AGREEMENT

This Ground Lease and Option Agreement (the “**Agreement**”) is entered into as of _____, 201_, (the “**Agreement Date**”) by and between Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona (“**District**”), and Pima County, a political subdivision of the State of Arizona (“**County**”). District and County are sometimes individually referred to as a “**Party**” and jointly referred to as the “**Parties**”.

RECITALS

A. County owns an unimproved parcel of real property (the “**Premises**”), approximately ___ acres in size, which is located [describe location] in downtown Tucson, Arizona, within the Rio Nuevo Multipurpose Facilities boundary. The Premises is legally described and depicted on Exhibit A.

B. The District has the authority to acquire property within the Rio Nuevo Multipurpose Facilities boundary, and construct commercial facilities that its board determines are necessary or beneficial to the district (A.R.S. §§ 48-4201(4)(b) and 48-4204(B)), and may issue revenue bonds for that purpose (A.R.S. §§ 48-4203(B)(3) and 48-4251). It may also “[e]nter into agreements with developers, contractors, tenants and other users of all or part of” such a facility. A.R.S. § 48-4203(B)(2).

C. The Pima County Board of Supervisors (the “**Board**”) has authority under A.R.S. § 11-254.04 to engage in any “activity that the board of supervisors has found and determined will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the inhabitants of the county,” including specifically the “acquisition, improvement, leasing or conveyance of real or personal property.”

D. The District and the County executed a Ground Lease Option Agreement dated _____, 2016 (the “**Option Agreement**”) pursuant to which the County granted to District an exclusive option (the “**Option**”) to lease the Premises in accordance with the terms and conditions of the Option Agreement.

E. District has exercised the Option, and the Parties, as provided in the Option Agreement, have agreed on the Rent Amount. The Board has determined that entering into this Agreement and leasing the Premises to District will assist in the creation or retention of jobs and will improve and enhance the economic welfare of the inhabitants of the County.

F. District intends to improve the Premises by constructing a Class A, multi-story, high-technology office building (the “**Building**”), together with a parking structure containing 350 parking spaces, and appropriate driveways and landscaping (all together, the “**Project**”). The District will sublease the Project to one or more new or expanding high-wage, technology-driven companies.

G. The District has determined that Project is a related commercial facility located within the Rio Nuevo Multipurpose Facilities boundary, that the District’s primary component is in

close proximity to the Project and will benefit from the Project, and that District will benefit from the tax revenues to be generated by the Project.

H. The Parties desire that County: (i) lease the Premises to District and (ii) grant an option to purchase the Premises to District (the "**Purchase Option**"), all upon the terms and conditions of this Agreement.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises of the Parties in this Agreement, the Parties agree as follows:

1. **Accuracy of Recitals.** The Parties hereby acknowledge the accuracy of the Recitals.
2. **Ground Lease.** Effective upon the Agreement Date, County hereby lets the Premises to District, and District hereby leases and takes the Premises from County (the "**Lease**").
3. **Condition of Premises.** District has inspected the Premises and accepts possession of the Premises in its "AS IS" condition on the Commencement Date (as defined below), and except for those representations and warranties of County contained in this Agreement, without representation or warranty of any kind, express or implied, including, without limitation, any warranty of income potential, future operating expenses or uses or fitness for a particular purpose. Except as otherwise expressly provided in this Agreement, District has full responsibility for the repair, alteration, maintenance, and replacement of the Premises, and any portion thereof, and any Improvements (as defined below). County has no obligation whatsoever for the repair, alteration, maintenance and replacement of the Premises, or any portion thereof, or the Improvements, except as expressly provided in this Agreement. District expressly acknowledges and agrees that the County has not made and is not making, and District is not relying upon, any warranties or representations regarding the Premises or any Improvements, except as expressly set forth in this Agreement.
4. **Term.**
 - A. **Initial Term.** The initial term of this Lease is twenty (25) years, commencing upon Substantial Completion as defined in Section 7(E), below (the "**Commencement Date**") and ending on the same day and month in the year 204_. "Term" means and includes this initial term and any exercised extensions.
 - B. **Extensions.** So long as District is in full compliance with all the terms and conditions of this Lease, it may extend the Term of this Lease for two successive terms of ten years each, provided that [describe reinvestment/improvement requirements for extensions]. Each extension option may be exercised no more than 12 months nor less than 3 months before the expiration of the initial term or preceding extension term.
5. **Rent.** Rent for the Premises from the Agreement Date through the Commencement Date ("**Initial Rent**") will be _____ and no/100 Dollars (\$ _____ .00) per year, payable by District to County, in advance, in equal monthly installments. Rent for the Premises after the Commencement Date ("**Net Rent**") will be _____

_____ and no/100 Dollars (\$_____.00) per year, payable by District to County, in advance, in equal monthly installments.

6. **Possession and Enjoyment.** County acknowledges and agrees that District, by paying the Rent and performing the other terms and conditions of this Lease, may peaceably hold and enjoy the Premises without any interruption by County or any person lawfully claiming by, through or under County, during the Term, except that County may enter upon and inspect the Premises by providing District with written notice of its intent to do so not less than 24 hours in advance.

7. **District's Improvements to the Premises.**

A. **Construction.** District will develop and construct the Project together with parking and driveway areas and other installations necessary or incidental to the operation or maintenance thereof (collectively, referred to as the "**Improvements**"). The Improvements will include a building (the "**Building**"), which will be a complete, independent structure containing not less than _____ square feet of interior space. [Insert any other design requirements or restrictions.] The Improvements will be constructed and developed in accordance with the approved Final Plans (as provided below) and all local development and building codes, and in compliance with Title 34 of the Arizona Revised Statutes. The Building must be designed and constructed using the U.S. Green Building Council's LEED Silver standard as a design guideline, but District is not required to obtain LEED certification.

B. **Commencement.** Construction of the Improvements will be commenced upon the closing of the debt and equity financing for the Project, no later than 18 months after the Agreement Date. Construction will not commence until each of the following has occurred:

- i. Plan Approvals. County approves the Final Plans.
- ii. Contract. District provides to County a copy of District's contract with the general contractor that will construct the Project. The contract must give County the right, but not the obligation, to assume District's obligations and rights under that contract if District defaults.
- iii. Insurance. District furnishes County with proof that District has obtained the liability and worker's compensation insurance required in this Agreement.
- iv. Builder's Risk Insurance. District furnishes County with proof that District, or District's contractor, has obtained "all risks" builder's risk insurance including vandalism and malicious mischief, in broad form and with a company reasonably acceptable to County, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees, with limits of at least \$_____ per loss single limit for all work at the job site. District must maintain

this insurance in effect until the Project is complete and a permanent Certificate of Occupancy has been issued for the Project.

- v. **Payment and Performance Bonds.** District delivers to County payment and performance bonds meeting the requirements of Title 34 of the Arizona Revised Statutes, issued by a surety company licensed to do business in the State of Arizona, running to County as obligee, conditioned on the completion of the Project in accordance with the Final Plans and the provisions of this Lease, free and clear of all mechanics' and other liens.

C. **Plans and Specifications.** District must obtain County's approval of plans and specifications for the Project. County will not unreasonably withhold its approval of plans and specifications, will communicate its approval or disapproval in writing, and will explain the grounds for any disapproval. If County disapproves of submitted plans and specifications, District will submit revised plans and specifications addressing the County's concerns. The Director of the County's Facilities Management Department is authorized to conduct the review and give approvals and disapprovals on behalf of County.

- i. **Preliminary Plans.** District will submit three full hard-copy sets, and an electronic (Autocad) set of preliminary construction plans and specifications for the Project, no later than 2 months after the Agreement Date. The plans must be prepared by an architect or engineer licensed to practice in Arizona, and must include preliminary grading and drainage plans, soil tests, utilities, sewer and service connections, locations of ingress and egress to and from public thoroughfares, curbs, gutters, parkways, street lighting, designs and locations for outdoor signs, storage areas, and landscaping. The plans must be sufficiently clear and detailed for the County make an informed judgment about the design and quality of construction, and about the impact of the Project on adjacent and nearby properties.

- ii. **Final Plans.** Within 2 months after County's approval of the preliminary plans, District will prepare and deliver to County three full hard copy sets and one electronic (Autocad) set of final plans and specifications ("**Final Plans**") substantially conforming to the preliminary plans previously approved by County. Any subsequent modification of the Final Plans must be submitted for County review and approval.

D. **Cost of Improvements.** All costs, expenses and charges incurred in the construction of the Improvements will be District's sole and exclusive obligation, and District will defend, hold the County harmless and indemnify it from all such costs, expenses, and charges, including attorneys' fees relating thereto.

E. **Substantial Completion.** Construction must be substantially completed within 18 months after it commences, subject to delays occasioned by "force majeure." If it is not substantially completed in a timely manner, the County may cancel this Lease by written notice to the District, subject to a period of 30 days during which the District may cure the failure to substantially complete the Project. The Project will be deemed

to be substantially complete upon issuance of a Certificate of Occupancy by the City of Tucson.

- F. **County Inspection.** County representatives may, but are not obligated to, inspect the Project as it is being constructed, and District will provide them access to the work for that purpose.
8. **Title to Improvements.** At all times during the Term of the Lease, the Improvements will be owned by District and District alone will be entitled to all of the tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery, and District will have the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Premises. Provided District has not exercised the Purchase Option, at the expiration or earlier termination of the Term, or any portion thereof, Tenant will peaceably leave, quit and surrender the Premises. Upon such expiration or termination and provided District has not exercised the Option, the Improvements will become the sole property of County at no cost to County, and will be free of all liens and encumbrances and in good condition, subject only to reasonable wear and tear.
9. **Fixtures and Furnishings.** District will retain ownership of all personal property, fixtures, equipment and furnishings (collectively, "**Fixtures**") from time to time installed in the Premises by District or its sublessees. District may remove any Fixtures at any time during the Term and will remove all Fixtures prior to the expiration of the Term, except those Fixtures that County agrees, in writing, may be left on the Premises. Any Fixtures not removed at the expiration of the Term will, at the election of County, become the property of County without payment to the District, or be deemed abandoned and removed by County at County's expense. Upon any removal of Fixtures, the District will promptly repair any and all resulting damage to the Premises.
10. **Subordination to Lenders.** The cost of the Project will be funded in part by loans from various lenders (the "**Lenders**").
- A. Provided the County has received at least 10 days written notice of any intended encumbrance of the Premises, it will allow the Lenders to hold a deed of trust or other security interest (a "**Leasehold Deed of Trust**") in District's leasehold interest in the Premises only to the extent necessary to secure repayment of Project loans, and County will execute such subordination agreements or similar document(s) as may be required by the Lenders, provided that such documents contain terms and conditions and are in a form reasonably satisfactory to County. A Lender, in the event of any foreclosure or assignment in lieu of foreclosure, must cure all District defaults, and any reletting of the Premises by a Lender must comply with all the terms and conditions of this Lease.
- B. District will keep the Premises free and clear of all other liens, claims, and encumbrances, including, but not limited to, mechanics' liens, laborers' liens and materialmen's liens. County agrees not to place any liens or encumbrances of any kind on the Premises without the prior written consent of District and its Lenders.

11. **Sublease and Assignment.**

- A. **Assignment.** District will not assign or encumber this Lease or any interest in it, except as permitted under Section 10 above, without County's prior written consent, which will not be unreasonably withheld.
 - B. **Sublease.** County acknowledges that District does not intend to occupy or use the Premises itself, and instead intends to sublet the Premises to one or more subtenants. County hereby approves the following proposed subtenants [list any identified subtenants] ("**Initial Subtenant(s)**"). Consent to any such subletting will in no way relieve District of any liability under this Lease and will not impose any additional burden or obligation on County. Every subtenant is required to comply with all District's obligations under this Lease.
 - C. **Salary Requirement.** Each subtenant must pay its employees an average annual wage, including benefits, of at least one-hundred fifty percent (150%) of the median regional wage for Pima County.
12. **Memorandum of Ground Lease and Option Agreement.** Upon the execution of this Agreement, the Parties will also execute a Memorandum of Ground Lease and Option Agreement to be recorded in the official records of the Pima County, Arizona Recorder (the "**Official Records**") in substantially the form attached hereto as **Exhibit B**.
13. **Payment of Additional Amounts.** The Lease described in this Agreement is a completely net lease. As such, except as specifically provided herein, District is solely responsible for any and all capital, operating, maintenance, and replacement costs and any other costs and expenses that result from District's development and use of the Premises, including, but not limited to, the construction of the Improvements. District's payment of insurance, taxes, utilities and any other charges, costs or fees charged and prorated to District under the terms of this Lease (collectively "**District's Obligations**") will accrue and be payable by District from and after the Agreement Date throughout the Term. County will forward to District any invoices, bills, or other charges representing District's Obligations ("**District Bills**"). District will pay any District Bills on or before the date such payment becomes due or if no due date is provided, then within ten (10) days of receipt of any such District Bill. District's failure to timely pay a District Bill will constitute a breach of this Agreement.
14. **Utilities.** District will promptly pay when due all charges for sewer, water, gas, electricity, telephone, garbage, and any other utilities or services delivered in connection with District's use and operation of the Premises during the Term, including connection and disconnection charges, if any.
15. **Taxes.** District will pay and discharge as and when the same become due, and prior to delinquency, all real and personal property, Government Property Lease Excise Tax ("**GPLET**"), and ad valorem taxes, assessments, levies, and other charges, general and special, which are or may be during the Term levied, assessed, imposed or charged against the Premises. District's obligation to pay such real and personal property and ad valorem taxes, assessments, levies, and other charges will begin with respect to amounts first accruing from and after the Agreement Date. District will also pay any taxes that County,

now or hereafter, is required to pay based on the Rent paid or other benefits conferred to County hereunder, including any income, franchise, excise, gross receipts, sales, or transaction privilege taxes.

16. Insurance.

A. Types of Insurance Required. District and any subtenants will procure, prior to beginning any activities on the Premises, and maintain throughout the Term of this Lease, the following insurance from an insurance company or companies reasonably acceptable to County:

- i. Commercial General Liability (CGL): Occurrence Form covering liability arising from premises, independent contractors, personal injury, bodily injury, broad form contractual liability and products-completed operations with minimum limits not less than \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate.
- ii. Business Automobile Liability: Coverage for any owned, leased, hired, and/or non-owned autos assigned to or used in connection with the Premises, with minimum limits not less than \$1,000,000 Each Accident.
- iii. Workers' Compensation (WC) and Employers' Liability: Workers' Compensation with Employers Liability limits of \$1,000,000 each accident and \$1,000,000 each employee – disease. Workers' Compensation statutory coverage is compulsory for employers of one or more employees.
- iv. Property: Commercial Property, Boiler and Machinery insurance with coverage at least as broad as ISO forms CP 00 01 and BM 00 20, covering the full replacement cost of all improvements on the Premises.

B. Additional Coverage Requirements:

- i. Claims Made Coverage: If any part of the required insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Lease, and District must maintain such coverage for a period of not less than three (3) years following expiration or termination of this Lease.
- ii. Insurer Financial Ratings: Coverage must be placed with insurers acceptable to County with A.M. Best rating of not less than A- VII, unless otherwise approved by County.
- iii. Additional Insured: The General Liability policy must be endorsed to include County and all its related special districts, elected officials, officers, agents, employees and volunteers (collectively "County and its Agents") as additional insureds with respect to liability arising out of the activities performed by or on behalf of District. The full policy limits and scope of protection must apply to County and its Agents as an additional insured, even if they exceed the limits required by this Lease.

- iv. Waiver of Subrogation: Commercial General Liability and Workers' Compensation coverages must each contain a waiver of subrogation in favor of County and its Agents for losses arising from work performed by or on behalf of District.
- v. Primary Insurance: The required insurance policies, with respect to any claims related to this Lease or the Premises, must be primary and must treat any insurance carried by County as excess and not contributory insurance. The required insurance policies may not obligate the County to pay any portion of District's deductible or Self Insurance Retention (SIR).

C. Verification of Coverage:

- i. Certificates. District's Insurer or Broker must evidence compliance with the insurance requirements by furnishing certificates of insurance executed by a duly authorized representative of each insurer. Each certificate must include a notation of policy deductibles or SIRs relating to the specific policy, and must specify that the policy is endorsed to include additional insured and subrogation waiver endorsements for the County and its Agents.
- ii. Renewal Certificate: A renewal certificate must be provided to County not less than 15 days prior to the policy's expiration date, along with actual copies of the additional-insured and waiver-of-subrogation endorsements.
- iii. Policies: County reserves the right to, at any time, require complete copies of any or all required insurance policies.
- iv. Cancellation Notice: District must notify the County in advance, in writing, if a required insurance policy will expire, be cancelled, be suspended, or be materially changed. The notice must be provided to the County by the earlier of (a) 30 days before the change will take effect, and (b) 2 business days after District receives notice of the change from its insurer. For cancellation for non-payment, Insurer must provide County with written notice ten (10) days prior to cancellation of policy.

D. Approval and Modifications: The Pima County Risk Manager may approve a modification of the above insurance requirements without the necessity of a formal contract amendment, but the approval must be in writing. Neither the County's failure to receive a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, or the County's receipt of any other information from District, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

- 17. **Repairs and Maintenance.** District will, at its sole cost and expense, keep and maintain, and replace where necessary, all Improvements on the Premises, including without limitation, buildings, sidewalks, fencing, paving, landscaping, wiring, heating, air conditioning, ventilating, plumbing, parking areas, ingress and egress, and other installations in good condition and repair in all material respects (normal wear and tear excepted), except if caused by County. District agrees to maintain, and replace where necessary, all underground and unexposed service facilities of the Premises.

18. **Permits, Laws and Ordinances.** District will, at its sole cost and expense, comply, and cause its contractors and subcontractors and subtenants to comply, in all material respects with all laws of all applicable governmental authorities which may now or hereafter, from time to time, be established and which are or will be applicable to the Premises and any operations on the Premises, and will take all actions necessary to cause the Premises to comply in all material respects with all provisions of the Project Documents and this Agreement.
19. **Environmental Compliance.**
- A. **Hazardous Materials Prohibited; Clean Air Act.** District and its sublessees will not cause or permit any Hazardous Material (as defined below) to be brought upon, kept, or used in or about the Premises without the prior written consent of County, other than such Hazardous Materials as are customarily necessary or useful to the type of operations permitted under this Lease and actually being carried out by District or its sublessees on the Premises which will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Materials. District's operations on the Premises will comply with applicable provisions of the Clean Air Act, 42 U.S.C. 7401 et seq. and Arizona Revised Statutes, Title 49, Chapter 3 and any other applicable environmental laws or regulations.
- B. **Hazardous Material.** As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Arizona or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) defined as a "hazardous waste" under NRS 459.400 et. seq., (ii) petroleum, (iii) asbestos, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601) or (vii) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. 6991 et. seq.
- C. **Clean-Up.** If the presence of any Hazardous Material on or in the Premises, or the soil or ground water under or adjacent to the Premises caused or permitted by the District, its sublessee(s) or their agents, employees, contractors or invitees results in any suspected contamination of the Premises, the soil or ground water under or adjacent to the Premises, the District will promptly notify County in writing and take all actions at its sole expense as are necessary to return the Premises, or such soil or ground water to the condition existing prior to the introduction of any such Hazardous Material to the Premises, or to such soil or ground water; provided that County's approval of such actions will first be obtained, which approval will not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises.

- D. **Pre-existing Contamination.** District, at District's cost, may obtain a Phase I Environmental Report (the "Phase I") for the Property. County agrees that any Hazardous Materials contaminating the Premises prior to possession of the Premises by the District will not result in liability for the District under this Paragraph, 42 U.S.C. § 9607(b)(3) or A.R.S. § 49-283(D), except to the extent such contamination is aggravated by the action or inaction of District.
- E. **Notices Regarding Environmental Conditions.** The District will, within ten (10) business days following receipt thereof, provide County with a copy of (i) any notice from any local, state or federal governmental authority of any violation or administrative or judicial order or complaint having been filed or about to be filed against the District, its sublessee(s), or the Premises alleging any violation of any local, state or federal environmental law or regulation or requiring District or County to take any action with respect to any release on or in the Premises or the soil or ground water under or adjacent to the Premises of Hazardous Material, or (ii) any notices from a federal, state or local governmental agency or private party alleging that the District may be liable or responsible for cleanup, remedial, removal, restoration or other response costs in connection with Hazardous Material on or in the Premises or the soil or ground water under or adjacent to the Premises or any damages caused by such release.
20. **Indemnification.** To the fullest extent permitted by law, the District will indemnify, defend, and hold harmless County, its officers, employees and agents ("Indemnified Parties") from and against any and all losses, costs, or expenses (including reasonable attorney fees) incurred or suffered by County as a result of any damages to property or injuries to persons (including death), or any suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of or directly related to any act, omission, fault or negligence by the District, its agents, employees, invitees, contractors, subtenants, or anyone under its direction or control or acting on its behalf, or anyone permitted by District to conduct any activity on the Premises, or in connection with any use or occupancy of the Premises under the terms of this Lease. District's indemnity obligations under this paragraph shall not extend to any claims for damages arising out of or directly related to any act, omission, fault or negligence of any of the Indemnified Parties, or any other persons or entities unrelated to the District.
21. **Default/Termination.** Either party may present written notice of default or non-performance to the other party.
- A. **District Default.** The occurrence of any one or more of the following events will constitute a default and breach of this Lease by District for which County may terminate this Lease:
- i. **Operation of Premises.** The vacating or abandonment of the Premises, or cessation of activities thereon, where such abandonment will continue for a period of thirty (30) calendar days after notice of such default is sent by County to District.

- ii. **Monetary Obligations.** The failure by District to make any payment required to be made by District hereunder, as and when due, where such failure will continue for a period of ten (10) calendar days after notice from County that such payment is due.
 - iii. **Insurance.** The failure by District to maintain insurance policies as set forth above for any period of time, in which event District must immediately cease all operations at the Premises until such insurance is obtained. In the event of such a default, County may, in County's sole discretion, obtain necessary insurance coverage in which event District will, within ten (10) business days of demand, reimburse and pay to County the full amount of any costs and premiums expended by County to obtain such coverage.
 - iv. **Violation of Law.** Violation of any law by District, or the conduct of any unlawful activities on the Premises that are permitted by District, either tacitly or explicitly, or that District has not taken reasonable means to prevent after it becomes or in the exercise of reasonable diligence should have become aware that such activities are being conducted.
 - v. **Health and Safety Violation.** Any action or omission by District that, in the County's reasonable judgment, causes a threat to the health or safety of the general public.
 - vi. **Other Covenants.** The failure by District to observe or perform any other of the covenants, conditions or provisions of this Lease to be observed or performed by District, where such failure continues for a period of thirty (30) days after written notice thereof by County to District; provided, however, that if the nature of District's default is such that more than thirty (30) days are reasonably required for its cure, then District will not be deemed to be in default if District commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.
- B. **County Default.** County will be in default if it fails to comply with any material obligation under this Lease, and fails to cure that failure within 30 days after receiving a written default notice from District detailing the nature of the obligation. If, however, the nature of County's default is such that more than 30 days are reasonably required for its cure, then County will not be deemed to be in default if County commences such cure within that period and thereafter diligently prosecutes such cure to completion.
- C. **Remedies.** Either party may pursue any remedies provided by law and in equity for the breach of this Lease, including termination of the Lease. No right or remedy is intended to be exclusive of any other right or remedy and each will be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Lease.

22. **Purchase Option.**

- A. **Grant of Option.** County hereby grants to District an option to purchase the Premises in fee together with all easements and other rights appurtenant to or for the benefit of

the Premises (the "**Purchase Option**"). Fee title to the Premises will be conveyed to District via special warranty deed (the "**Deed**") free and clear of all liens and encumbrances except exceptions permitted under the Original Agreement or those approved in writing by District.

B. **Option Purchase Price.** District will pay to County, in cash at closing, the fair market value of the Premises, appraised as vacant land. The Parties will establish this value (the "**Purchase Price**") using the appraisal process set forth in the Option Agreement.

C. **Term of Option.** The Purchase Option will commence on the Agreement Date and will continue during the Term of the Lease.

D. **Exercise of Option.** At any time during the Term, District may exercise the Purchase Option by giving County and _____ Title Agency ("**Title Company**") at least thirty (30) days' written notice of its intent to exercise the Purchase Option with a direction to Title Company to prepare an updated Title Commitment for the Premises. The date upon which District pays the Purchase Price to County and Title Company records the Deed will be referred to as the "**Purchase Option Closing Date**".

E. **Title Commitment and Closing.**

i. Within four (4) days of the Opening of Escrow, the Title Company will issue and deliver to District and County a preliminary title commitment for the Premises, as well as copies of all instruments referred to therein, including all deeds, easements or other instruments which provide for access to the Premises (collectively the "**Title Commitment**"). The Title Commitment will be an irrevocable commitment by the Title Company to issue the Title Policy (defined below) subject to the satisfaction of the requirements contained in the Title Commitment.

ii. District will have twenty (20) days after receipt of the Title Commitment to object to any exceptions or requirements contained in the Title Commitment or identified on the ALTA/ACSM survey of the Premises ("**Survey**") to be provided and paid for by District ("**Title Issues**") by providing written notice thereof to the County. If District has no objection, it may provide notice thereof to County, in which case the 20-day period will cease. In the event of any such objection, County will have ten (10) days after receipt of District's notice of the Title Issues to review and evaluate the Title Issues and give written notice to District whether or not the County will cure or cause to be removed the Title Issues ("**Title Review Period**"). If the initial Title Commitment or Survey is updated and/or amended by any new exception(s) or requirement(s) (by endorsement, amendment, or otherwise) that District deems to be adverse to its anticipated title ("**Amended Title Commitment**"), the Title Review Period will be extended by three (3) business days following District's receipt of the Amended Title Commitment (including the best available copies of all new exceptions) to notify the County in writing of District's objections to any new exceptions ("**Extended Title Review Period**"). If District timely objects to any matter disclosed in an Amended Title Commitment, County may give written notice to District within three (3) business days after receipt of the new objections as to

whether or not the will cure or cause to be removed an objected to matter. If County timely gives District written notice that the County will not cure or cause to be removed the objected to matter (or if the County fails to provide any written notice within the applicable response period), then District will have three (3) business days after receipt of such written notice (or, in the case of no written notice, three (3) business days after the expiration of the County's applicable response period) within which to terminate this Option Purchase Agreement. If District fails to timely terminate the Option under this provision, the Title Review Period and the Extended Title Review Period will expire.

- iii. In the event that the County fails to cure any exceptions that County agreed to cure, to the reasonable satisfaction of the District prior to closing, the Purchase Option may be canceled by the District giving notice thereof to the County and Title Company as provided above.
- iv. County and District hereby agree and acknowledge that electronic delivery of the Title Commitment and any Amended Title Commitments by the Title Company (whether in the form of an attachment to electronic mail or in the form of a link to a website where the Title Commitment or Amended Title Commitment can be downloaded) is an acceptable form of delivery, and the Title Commitment or Amended Title Commitment will be deemed delivered on the day it is electronically transmitted to and received by County and District.
- v. Notwithstanding anything mentioned herein to the contrary, on or before the Purchase Option Closing Date, County will satisfy and remove all voluntary monetary liens placed on the Premises by County, without the need of any objection from District.
- vi. As used in this Agreement, the term "**Permitted Exceptions**" will collectively mean the exceptions to title reflected in the Title Commitment or any amendment thereto which are approved (or deemed approved) by District pursuant to this section.
- vii. At the Purchase Option Closing, the Title Company will deliver to District either an ALTA extended form of title insurance (the "**Title Policy**") with respect to the Premises in the full amount of the Purchase Price, which will insure that fee simple title to the Premises is vested in District, subject only to: (i) the usual printed exceptions and exclusions contained in the Title Policy; and (ii) the Permitted Exceptions or an endorsement to its existing Owner's Policy in connection with the Project. If a new policy is issued, the cost of a basic premium policy will be paid for by County with any extended coverage paid for by District.
- viii. The escrow agent's fee will be evenly divided and paid by the Parties. Each Party will pay its own attorneys' fees. All other fees and costs relating to the Closing will be paid by the parties as is customary in similar real estate transactions in Pima County, Arizona.
- ix. The Parties understand, acknowledge and agree that no real estate broker is involved in this transaction and that no real estate brokerage commission will be paid as a

result of the sale of the Premises. District acknowledges that District Board Members Mark Irvin and Chris Sheafe are each licensed real estate brokers in Arizona. Each Party will defend, indemnify and hold the other harmless from and against any and all claims, costs, liabilities or damages for any real estate brokerage commissions or fees, including any attorneys' fees incurred in connection therewith, which may result from the conduct of the party from whom indemnification is sought.

- x. The Parties agree to execute escrow instructions that the escrow agent may require in connection with the Closing.

23. Representations and Warranties.

A. District Representations and Warranties. As of the Agreement Date and on the Purchase Option Closing Date, if any, District hereby represents and warrants to County as follows:

- i. District is organized and lawfully existing as a special taxing district of the State of Arizona.
- ii. District has the full right, power and authority to make, execute, deliver and perform this Agreement.
- iii. District's execution and delivery of this Agreement has been authorized by all requisite action on the part of the District, and the execution and delivery of this Agreement by District and the performance of its obligations hereunder will not violate or contravene any agreement or obligation to which District is a party or by which it is bound.
- iv. There is no action, suit, litigation or proceeding pending or, to District's knowledge, threatened against District that could prevent or impair District's entry into this Agreement and/or performance of its obligations hereunder.
- v. The persons signing this Agreement on behalf of District are duly and validly authorized to do so.

B. County's Representations and Warranties. As of the Agreement Date and on the Purchase Option Closing Date, if any, County hereby represents and warrants to District that, to the best of the County Administrator's and the Manager of Real Property Services' knowledge:

- i. County owns fee simple title to the Premises, free and clear of all liens, charges, encumbrances, encroachments, easements, restrictions, leases, tenancies, occupancies or agreements and other matters affecting title, except for those matters previously approved by District in writing, or created by District or by County with District's approval. The Premises is in compliance with all easements, restrictions and other matters of record affecting title as of the date hereof.

- ii. County has full right, power and authority to make, execute, deliver and perform its obligations under this Agreement. County has obtained and received all required and necessary consents and approvals to enter into this Agreement with District. The entry by County into this Agreement with District and the performance of all of the terms, provisions and conditions contained herein does not and will not violate or cause a breach of or default under any agreement or obligation to which County is a party or by which it is bound.
- iii. There are no tenants, lessees or other occupants of the Premises having any right or claim to possession or use of the Premises or a claimed preference for occupancy in the Premises.
- iv. County is not obligated under any other option, contract, lease or agreement, oral or written, with respect to the ownership, use, operation, management, maintenance, lease, sale or financing of the Premises except as previously disclosed to District.
- v. No representation, statement or warranty by County contained in this Agreement or in any exhibit attached hereto contains any untrue statement or omits a material fact necessary to make the statement of fact therein recited not misleading.
- vi. There is no action, suit, litigation or proceeding pending or, to County's knowledge, threatened against County and/or the Premises which could prevent or impair County's entry into the Premises and/or performance of its or any of District's obligations hereunder or materially and adversely impact District's rights hereunder.
- vii. The person signing this Agreement on behalf of County is duly and validly authorized to do so.
- viii. There are no pending condemnation proceedings relating to any portion of the Premises, and County has received no notices of the institution or the proposed institution of condemnation proceedings relating to any portion of the Premises or of any other proceedings against or any taking of all or any part of the Premises.
- ix. There is no pending or threatened litigation, governmental proceeding, notice of action required to be taken, judgment or cause of action against or related to the Premises, or any portion thereof, or against County or County's agents with respect to the Premises or any portion thereof.
- x. Except as may be referenced in any environmental assessment, neither the Premises nor any part thereof has been used for the disposal of refuse or waste, or for the generation, processing, manufacture, storage, handling, treatment, transportation, or disposal of any Hazardous Materials, as defined in will have the meaning ascribed in, and will include those substances listed in Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq. and the regulations promulgated thereunder (as amended from time to time) and the Clean Air Act, 42 U.S.C. 7401, et seq. and the regulations promulgated thereunder (as amended from time to time).

- xi. County represents and warrants that no person on its behalf significantly involved in the initiating, negotiating, securing, drafting, creating or consulting with respect to this Agreement, the Lease or the Option is or will be at any time from the Agreement Date and for a period of 3 consecutive years thereafter, and if the District exercised the Option, for a period of 3 consecutive years after the Purchase Option Closing Date, be an employee or agent of District or act as a consultant on behalf of District or any of its affiliated entities.

23. General Provisions.

- A. **Waivers.** No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, whether or not similar, nor will any waiver be a continuing waiver. Unless expressly provided for in this Agreement, no waiver will be binding unless executed in writing by the Party making the waiver. Any Party may waive any provision of this Agreement intended for its sole benefit; however, unless otherwise provided for herein, such waiver will in no way excuse the other Party from the performance of any of its other obligations under this Agreement.
- B. **Construction, Governing Law and Venue.** This Agreement will be interpreted according to Arizona law, and will be construed as a whole and in accordance with its fair meaning and without regard to, or taking into account, any presumption or other rule of law requiring construction against the Party preparing this Agreement or any part hereof. Any dispute or controversy relating to this Agreement, including the breach and enforcement thereof, will take place in the Superior Court of Pima County, Arizona.
- C. **Time.** Time is strictly of the essence of each and every provision of this Agreement.
- D. **Attorneys' Fees.** If any action is brought by any Party in respect to its rights under this Agreement, the prevailing Party will be entitled to reasonable attorneys' fees and court costs as determined by the court, including attorneys' fees incurred prior to any court or enforcement action that relate to the enforcement hereof.
- E. **Binding Effect.** This Agreement and all instruments or documents entered into pursuant hereto are binding upon and will inure to the benefit of the Parties and their respective successors and assigns.
- F. **Further Assurances and Documentation.** Each Party agrees in good faith to take such further actions and execute such further documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.
- G. **Time Periods.** If the time for the performance of any obligation under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance will be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.
- H. **Headings.** The headings of this Agreement are for purposes of reference only and will not limit or define the meaning of any provision of this Agreement.

- I. **Entire Agreement.** This Agreement, together with all exhibits referred to herein, which are incorporated herein and made a part hereof by this reference, constitute the entire agreement between the parties pertaining to the subject matter contained in this Agreement. No supplement, modification or amendment of this Agreement will be binding unless in writing and executed by the Parties.
- J. **Counterparts.** This Agreement may be executed by the exchange of faxed or electronic signatures and in any number of counterparts.
- K. **Approvals and Notices.** Any objection, approval, disapproval, demand, document or other notice ("Notice") that any Party may desire or may be obligated to give to any other Party will be in writing and may be given by personal delivery, registered or certified mail (return receipt requested), email transmission (with delivery receipt) or by commercial courier to the party or its successors or assigns to whom the Notice is intended at the address of the party set forth below or at any other address as the parties may later designate. Change of address by a party will be given by Notice as follows:
- If to the District: Rio Nuevo Multipurpose Facilities District
400 West Congress, Suite 152
Tucson, Arizona 85701
- with a copy to: Mark Collins, Esq.,
Gust Rosenfeld P.L.C.
One South Church Avenue, Suite 1900
Tucson, Arizona 85701
- If to the County: Director, Pima County facilities Management
150 W. Congress Street, 5th Floor
Tucson, Arizona 85701
- L. **Conflict of Interest.** This Agreement is subject to and may be cancelled in accordance with the provisions of A.R.S. § 38-511.

SIGNATURES APPEAR ON THE FOLLOWING PAGES

This Ground Lease and Option Agreement is dated as of the date first above written.

DISTRICT:

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT

By: _____

Its: Chairman

By: _____

Its: Secretary

COUNTY:

PIMA COUNTY, ARIZONA

By: _____

Chair of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO CONTENT:

By: _____

Director, Facilities Management Department

APPROVED AS TO FORM:

By: _____

Deputy County Attorney

EXHIBIT ONLY - NOT FOR EXECUTION

EXHIBIT A
(TO GROUND LEASE AND OPTION AGREEMENT)
(LEGAL DESCRIPTION OF THE PREMISES)

EXHIBIT A - GROUND LEASE AND OPTION AGREEMENT

EXHIBIT B
(TO PURCHASE AND SALE AGREEMENT)
(MEMORANDUM OF GROUND LEASE AND OPTION)

When recorded, return to:

Mark Collins, Esq.,

Gust Rosenfeld P.L.C.

One South Church Avenue, Suite 1900

Tucson, Arizona 85701

MEMORANDUM OF GROUND LEASE AND OPTION AGREEMENT

THIS MEMORANDUM OF GROUND LEASE AND OPTION AGREEMENT is entered into this ___ day of _____, 201_, by and between Pima County, a political subdivision of the State of Arizona ("**County**"), and Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona ("**District**").

County and District have entered into an unrecorded Ground Lease and Option Agreement dated _____, 201_ (the "**Lease**") whereby County has (i) leased to District all of the tract of land located in Tucson, Arizona, which is more fully described on **Exhibit A** attached hereto, and all rights, alleys, ways, privileges, appurtenances and advantages appurtenances and advantages, to the same belonging or in any way appertaining ("**Property**") for a term of 20

years, and (ii) granted to District an option to purchase the Property at any time for the term of the Lease on the terms more fully described therein.

A copy of the Lease and Option Agreement is available for person having a legitimate interest in the Property at the following address:

Rio Nuevo Multipurpose Facilities District
400 West Congress, Suite 152
Tucson, Arizona 85701

This Memorandum of Ground Lease and Option Agreement is dated as of the date first above written.

SIGNATURES APPEARS ON THE FOLLOWING PAGES

DISTRICT:

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT

By: _____

Its: Chairman

By: _____

Its: Secretary

STATE OF ARIZONA)

) ss.

COUNTY OF PIMA)

I HEREBY CERTIFY that on this ____ day of _____, 201_, before me, a Notary Public for the state aforesaid, personally appeared Fletcher McClusker, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing Memorandum of Lease and Option Agreement, who acknowledged that he is the Chairman of the Board of Directors for Rio Nuevo Multipurpose Facilities District and that he has been duly authorized to execute, and has executed, such instrument on its behalf for the purposes therein set forth.

Notary Public

My commission expires on _____

STATE OF ARIZONA)

) ss.

COUNTY OF PIMA)

I HEREBY CERTIFY that on this ____ day of _____, 201_, before me, a Notary Public for the state aforesaid, personally appeared Fletcher McClusker, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing Memorandum of Lease and Option Agreement, who acknowledged that he is the Chairman of the Board of Directors for Rio Nuevo Multipurpose Facilities District and that he has been duly authorized to execute, and has executed, such instrument on its behalf for the purposes therein set forth.

Notary Public

My commission expires on _____

COUNTY:

PIMA COUNTY, ARIZONA

By: _____

Chair of the Board of Supervisors

STATE OF ARIZONA)

) ss.

COUNTY OF PIMA)

I HEREBY CERTIFY that on this __ day of _____, 2016, before me, a Notary Public for the state aforesaid, personally appeared _____, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing Memorandum of Lease and Option Agreement, who acknowledged that he/she is the Chairperson of the Pima County Board of Supervisors and that he/she has been duly authorized to execute, and has executed, such instrument on its behalf for the purposes therein set forth.

Notary Public

My commission expires on _____